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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 686 (LAK)

5 JAMES GATTO, a/k/a "Jim,"
6 MERL CODE,
7 CHRISTIAN DAWKINS,

8 Defendants.

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9 October 23, 2018
10 11:24 a.m.

11 Before:

HON. LEWIS A. KAPLAN,

12 District Judge
13 and a Jury

14 APPEARANCES

15 ROBERT S. KHUZAMI
16 Acting United States Attorney for the
17 Southern District of New York
18 BY: EDWARD B. DISKANT
19 NOAH D. SOLOWIEJCZYK
20 ALINE R. FLODR
21 ELI J. MARK
22 Assistant United States Attorneys

23 WILLKIE FARR & GALLAGHER LLP
24 Attorneys for Defendant Gatto
25 BY: MICHAEL S. SCHACHTER
CASEY E. DONNELLY

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APPEARANCES (Cont'd)

NEXSEN PRUET LLC

Attorneys for Defendant Code

BY: MARK C. MOORE

-and-

MERL F. CODE

HANEY LAW GROUP PLLC

Attorneys for Defendant Dawkins

BY: STEVEN A. HANEY

Also present: SONYA JACOBS, Paralegal
SYLVIA LEE, Paralegal
ANTHONY CASOLA, FBI

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1 (Trial resumed; jury not present)

2 THE COURT: Good morning. I take it what I have in
3 front of me is the redacted superseder, is that right?

4 MR. DISKANT: Yes, your Honor.

5 THE COURT: OK. And has it gone in yet?

6 MR. DISKANT: It has.

7 THE COURT: It has. So let's mark it Court Exhibit J,
8 just for good order.

9 MR. DISKANT: Thank you.

10 (Continued on next page)

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1 (Jury present)

2 THE COURT: Good morning, everyone.

3 THE CLERK: Please be seated.

4 THE COURT: The jury and defendants all are present.

5 Members of the jury, in just a second you will
6 continue your deliberations, and Andy will get you, if he
7 hasn't already, the lunch order forms and at some appropriate
8 time this afternoon, if you are still deliberating, the dinner
9 forms.

10 And so you shall resume your deliberations now.

11 THE CLERK: Would the jury please come this way.

12 (11:26 a.m., the jury resumed deliberations)

13 THE COURT: OK. So the lunch break will be 12:45 to
14 2, and if we're still here, the dinner break from 6:30 to 7:30.

15 OK. Thanks.

16 THE CLERK: All rise.

17 (Recess pending jury verdict)

18 (2:49 p.m., jury not present)

19 THE COURT: Well, the jury has been very quiet for two
20 days. I knew that if I went out for a short walk, something
21 would happen.

22 So you have all seen the note, which has been marked
23 Court Exhibit K. The jurors would like the black binders with
24 the transcript of conversations.

25 Anybody have any objection?

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1 MR. MOORE: No, your Honor.

2 MR. HANEY: No your Honor.

3 MR. DISKANT: No, your Honor.

4 THE COURT: OK. Have you been through the binders?

5 You are all agreed that they now contain only exhibits that are
6 in evidence?

7 MR. DISKANT: Your Honor, we're in the very last
8 stages of doing that, but I have no doubt we are going to reach
9 agreement within the next few minutes.

10 THE COURT: OK. Assuming that you reach agreement, is
11 there any need to bring them into the courtroom?

12 MR. DISKANT: I don't think so, your Honor.

13 MR. SCHACHTER: I don't think so, your Honor.

14 MR. MOORE: No, your Honor.

15 THE COURT: OK. If there is no objection, I will have
16 Andy just wheel or otherwise transport them into the jury room
17 and leave them with them. They, of course, have had all these
18 transcripts for two days already, but.

19 MR. MOORE: The only thing we ask is if your Honor
20 would take another constitution at around 4:30.

21 THE COURT: It is very tempting, but I think I
22 actually have another matter on at 4 or 4:30.

23 OK. So that takes care of this case. We are in
24 recess.

25 (Recess pending jury verdict)

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(5:51 p.m., jury not present)

THE COURT: OK. Be seated, folks.

Now, we have the note that you've seen, Court Exhibit L, which says: "Transcript of Gassnola testimony. Two copies. Starting with the 8/28/17 text with Gatto. (Government Exhibit 107K-1)."

So, have you folks come to a view about what exactly we should give them?

MR. DISKANT: No, your Honor. I think, from the government's perspective, this is a little bit ambiguous. It is not clear whether they are asking for his direct testimony or all of his testimony about the text, whether they are asking for the balance of his direct from that point onward, whether they are asking for the balance of everything from that point onward.

I would tell the Court that that text does not come up on cross-examination, it comes up briefly on direct, but that if we gave them from that point on everything, it would be almost 250 pages of testimony.

THE COURT: So what does the government propose?

MR. DISKANT: I think we need to ask the jury to clarify what they are asking for.

THE COURT: OK. What is the defense point of view?

MR. SCHACHTER: Your Honor, it's my view that it is relatively unambiguous and that they want the transcript of the

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1 testimony starting --

2 THE COURT: So in what degree is it ambiguous?

3 MR. SCHACHTER: I'm sorry, your Honor. No, I meant
4 unambiguous. I think they want his entire testimony starting
5 from that point, and I interpret this to be direct and cross
6 starting from this point, which is near the end of the direct
7 examination. It is on transcript page 1015. And so it would
8 be our proposal to prepare redacted transcripts of the
9 testimony, as they requested, from that point where it comes up
10 in the direct through the completion of the cross-examination
11 and redirect.

12 MR. MOORE: I would concur.

13 MR. HANEY: I would as well, your Honor.

14 MR. DISKANT: Your Honor, it is extremely unusual that
15 the jury would ask for a very focused portion of the direct but
16 expect to receive the entirety of the cross if that were the
17 issue.

18 THE COURT: OK. I'm going to inquire. We'll see what
19 they want. Bring them in.

20 MR. DISKANT: For what it's worth, your Honor, there
21 is also a redirect as well.

22 (5:55 p.m., jury present)

23 THE COURT: The jurors and defendants all are present.
24 You may be seated.

25 Members of the jury, we have your note. It is not

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1 clear to us. Let me tell you the possibilities that have
2 occurred to us. One is you want two copies of all of
3 Mr. Gassnola's testimony. Option two is that you want two
4 copies of the portion of his testimony that starts with the
5 first reference to Government Exhibit 107K-1 and goes on
6 through the rest of it. And the third is that maybe it's
7 somewhat less than the second alternative.

8 So, please go back in the jury room and tell us as
9 exactly as you can what you would like. Send in another note.

10 (5:56 p.m., the jury resumed deliberations)

11 THE COURT: Be seated, folks.

12 OK. We will be in recess until we have another note.

13 (Recess pending jury verdict)

14 (7:48 p.m., jury not present)

15 THE COURT: Who is bringing the bagels and coffee?

16 OK. First of all, it has been brought to my attention
17 that when I read the last juror note, Court Exhibit M, I
18 inadvertently said Government Exhibit 107K-1. I should have
19 said K-10.

20 Secondly, counsel have furnished us with two copies of
21 the requested testimony.

22 There is an intervening note, isn't there?

23 (The Court conferred with the Clerk)

24 MR. DISKANT: Yes, your Honor.

25 THE COURT: There is?

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1 MR. DISKANT: Yes, your Honor. We had asked them to
2 clarify.

3 THE COURT: Yes. Where is the note on the
4 clarification?

5 THE CLERK: There were two notes. L, that was the
6 first one.

7 THE COURT: OK. So L is the one that I referred to
8 before. In any case, they both refer to 107K-10, not 107K-1.

9 So the first note was the ambiguous one. And the
10 second note says: "Please provide two copies of Gassnola's
11 testimony starting at the GX107K-10 exhibit through the end of
12 his testimony, only that portion."

13 And counsel, I take it, now agree that it is pages
14 1015 through 1258 of the transcript, with redactions, right?

15 MR. SCHACHTER: Yes, your Honor.

16 MR. DISKANT: Yes, your Honor.

17 THE COURT: OK. And so we have two copies. We will
18 mark them Court Exhibit N1 and N2 arbitrarily, and we'll just
19 send them into the jury room.

20 Have we resolved with precision and certitude how late
21 we are staying tonight, or not?

22 THE CLERK: The cars are coming between 8 and 8:30.

23 THE COURT: We are sitting until 8:30, then.

24 So, we'll see what happens.

25 Anything else? No?

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1 MR. DISKANT: No, your Honor.

2 MR. MOORE: No, your Honor.

3 THE CLERK: All rise.

4 (Recess pending jury verdict)

5 (8:23 p.m., jury not present)

6 THE COURT: Good evening. Be seated, folks.

7 OK. The jurors' transportation is here so I'm going
8 to send them home.

9 Let's bring them in.

10 (8:24 p.m., jury present)

11 THE CLERK: Please be seated, everyone.

12 THE COURT: OK. The jurors and the defendants all are
13 present.

14 Folks, I'm told your transportation is here. So,
15 we'll break now. I'll see you 9:30 tomorrow morning and we'll
16 go from there.

17 You may depart, members of the jury, and the officers
18 will see that you get to your transportation.

19 (Jury not present)

20 THE COURT: OK. Anything else for me tonight?

21 MR. DISKANT: No.

22 THE COURT: Enjoy the rest of the evening, folks.

23 (Adjourned to 9:30 a.m. October 24, 2018)

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